

1. Requested Action:

Meeting Date: August 1, 2011

Status report to Town Council on progress of COP Ordinance to implement Council's interpretation of LPA Resolution 2009-0024.

Why the action is necessary:

None required. This status update is provided for informational and discussion purposes.

What the action accomplishes:

To provide Council with an update on the work effort to date, as well as the proposed project timeline.

2. Agenda:

☐ Consent
☒ Administrative

3. Requirement/Purpose:

☐ Resolution
☐ Ordinance

4. Submitter of Information:

☐ Council
☒ Town Staff - Comm Dev

5. Background:

On November 10, 2009, a report, titled "Policy Considerations and Options: Consumption of Alcoholic Beverages" was presented to the LPA for their consideration. The report was commissioned by a former Town Manager and prepared by the former Community Development Director. In regards to the issue of COP on the Gulf Beaches, the report concluded, "The Plan does not clearly provide for the expansion of permitted COP onto the Gulf beaches, neither does it clearly prohibit it." At that LPA Meeting, as memorialized in LPA Resolution 2009-24, the LPA voted 5 to 1 to recommend that the Comprehensive Plan: "does restrict further expansion of on-premises consumption of alcoholic beverages on the Gulf beaches within the Town of Fort Myers Beach." The net effect of this opinion on the part of LPA was to recommend to Town Council, in the form of a Legislative Interpretation (as provided for in Chapter 15 of the Plan) that it was the intent of the Plan to further restrict the expansion of COP in the Recreation Future Land Use category.

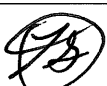
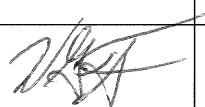
At the December 6, 2010 Town Council Meeting, Council voted 4 to 1 to reject the LPA's Resolution and by rejecting the LPA's motion. Further, in a subsequent motion and discussion, Council determined that the Land Development Code was the appropriate place to identify more specific permissible uses and directed Staff to prepare an ordinance regulating COP in EC.

The attached memo provides a progress report on the development of a COP Ordinance and the Local Planning Agency's efforts to date. Further, it provides the proposed project timeline, based upon Staff's interaction with the LPA to date and the remaining work effort required.

6. Alternative Action: N/A

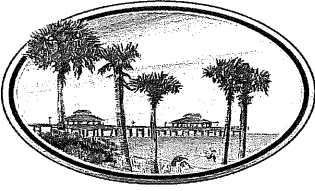
7. Management Recommendations: N/A

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

9. Council Action:

☐ Approved ☐ Denied ☐ Deferred ☐ Other



Town of Fort Myers Beach

Memorandum

To: Mayor and Town Council

Through: Terry Stewart, Town Manager

CC: Marilyn Miller, Town Attorney

From: Walter Fluegel, Community Development Director

Date: 07/20/2011

Re: Progress Report on COP Ordinance

The attached memo provides a progress report on the development of a COP Ordinance and the Local Planning Agency's efforts to date. Further, it provides the proposed project timeline, based upon Staff's interaction with the LPA to date and the remaining work effort required.

Background Information:

On November 10, 2009, a report, titled "Policy Considerations and Options: Consumption of Alcoholic Beverages" was presented to the LPA for their consideration. The report was commissioned by a former Town Manager and prepared by the former Community Development Director. In regards to the issue of COP on the Gulf Beaches, the report concluded, "The Plan does not clearly provide for the expansion of permitted COP onto the Gulf beaches, neither does it clearly prohibit it." At that LPA Meeting, as memorialized in LPA Resolution 2009-24, the LPA voted 5 to 1 to recommend that the Comprehensive Plan: "does restrict further expansion of on-premises consumption of alcoholic beverages on the Gulf beaches within the Town of Fort Myers Beach." The net effect of this opinion on the part of LPA was to recommend to Town Council, in the form of a Legislative Interpretation (as provided for in Chapter 15 of the Plan) that it was the intent of the Plan to further restrict the expansion of COP in the Recreation Future Land Use category.

At the December 6, 2010 Town Council Meeting, Council voted 4 to 1 to reject the LPA's Resolution. In a subsequent motion and discussion, Council determined that the Land

Development Code was the appropriate place to identify more specific permissible uses and directed Staff to prepare an ordinance regulating COP in EC.

This memo provides a progress report on the development of a COP Ordinance and the Local Planning Agency's efforts to date. Further, it provides the proposed project timeline, based upon Staff's interaction with the LPA to date and the remaining work effort required.

Attachments:

Exhibit A-LPA Meeting minutes from January, 2011 through June, 2011.

Exhibit B- April 4, 2011 LPA memo and material on COP

Exhibit C- May 4, 2011 LPA memo and material on COP

Exhibit D- June 9, 2011 LPA memo and material on COP

Exhibit E- July, 2011 LPA back-up information

Timeline:

1. January 11, 2011 LPA Meeting

-At the January Meeting, during the Community Development Director's Report, Staff provided the LPA with an update on the status of Town Council's December 6, 2010 Action on LPA Resolution 2009-0024 and that Council had rejected the LPA's recommendation. Further, it was indicated that Staff would prepare an ordinance to deal with COP in EC, but there was no formal timeline at this point. The LPA Chair advised, "when it does come before the LPA, they will need a very thorough presentation with all the needed information."

2. January to April, 2011 COP Work Effort

-From January to April, Community Development Department Staff monitored COP in the EC during Spring Break. The nature of the monitoring, was to observe and learn, in order to develop an understanding of the potential issues and to develop some initial regulatory concepts. In the end of March, Staff drafted a conceptual working ordinance on one approach to regulating COP in EC. The purpose of this working draft was to facilitate a discussion at the April LPA meeting.

3. April, 2011 LPA Meeting

-Staff presented to LPA a preliminary working draft of one conceptual approach to regulating COP on the beach for existing establishments and a conceptual approach for regulating new establishments through the Special Exception Process. The purpose of this workshop, from Staff's perspective was to focus on regulatory requirements (i.e. standard conditions of approval that would be

applied to all existing or future establishments with COP in EC), such as hours of service, signage, restricting the movement of alcohol from one property to another, environmental standards (such as bio-degradable plastic cups with the establishments name on the cup), maintenance requirements (including maintaining the beach free of litter and debris) and terms of revocation of the extension of premises. The transmittal memo was very clear that this was intended to be a working draft and that the discussion was meant to be a workshop discussion. Further, the transmittal memo was clear that Staff was looking for input on procedural approaches and regulatory standards. A copy of Staff's memo to LPA and working draft ordinance is provided in Exhibit B.

At this meeting, several LPA opined that they were opposed to COP in EC and expressed their intent to recommend denial of any ordinance that proposes allowing COP in EC. Further, the LPA's discussion focused heavily on the Comprehensive Plan interpretation. Staff reminded the LPA that Council had rejected the LPA interpretation and accordingly, the conversation needed to focus on the Land Development Code. Further, the LPA opined that they would need much more information than was provided, without providing neither specific details nor a consensus on the information necessary.

4. May, 2011 LPA Meeting

-Based upon LPA input at the April LPA meeting, Staff prepared a more comprehensive summary of the overall COP issue, with specific focus on the LPA's prior Comprehensive Plan interpretation and Town Council's rejection of that interpretation. A copy of Staff's memo to the LPA is provided as Exhibit C. The memo included a summary of Council's rejection of the LPA's Comprehensive Plan interpretation on COP, a summary of potential regulatory approaches, an overview of Staff's concerns about the need to establish a regulatory framework for COP, a summary of potential conditions of approval/regulatory requirements, a copy of Jerry Murphy's report, "Policy Considerations and Options: Consumption of Alcoholic Beverages," a copy of LPA Resolution 2009-24, a copy of Staff's November 8, 2010 memo on COP in REC Future Land Use and an inventory of existing licensed COP establishments adjacent to the EC Zoning District.

At this meeting the LPA Chair presented her May 10, 2011 memo (included in Exhibit D), "COP Expansion In The Environmentally Critical Zone/Recreation FLUM." The memo outlined the Chair's analysis that the Code prohibits expansion of COP in EC. Also, Commissioner Ryffel presented a memo outlining alternative approaches to regulating COP in EC by allowing consumption, but not service (Exhibit D).

The meeting started off with the Town Manager addressing the LPA on the importance of crafting a well thought out and comprehensive COP ordinance to

address the current lack of any regulatory requirements on the existing establishments with COP in EC.

Staff then presented a summary of Staff's memo. During public input, the owner of Nemo's expressed a need for a level playing field that provide a fair standard. Three members of the public expressed opposition to expansion of alcohol on the beach.

The LPA Chair presented her memo on COP in EC and iterated her belief that the Land Development Code prohibits it. Commissioner Ryffel presented his alternative approach to allowing consumption in EC, accessory to permitted establishments. In the discussion of this alternative approach, it appeared that there were two emerging camps on the LPA, with some in favor of recommending denial of any ordinance to deal with COP in EC and the other camp leaning towards favoring Commissioner Ryffel's alternative approach.

5. June, 2011 LPA Meeting

-Based upon LPA input at the May LPA meeting, Staff prepared a workshop discussion (Exhibit D), which included reviewing the LPA Chair's Memo regarding her interpretation of COP in EC/REC. Further, the conversation focused on an alternative regulatory approach proposed by Commissioner Ryffel. The memo outlined the potential regulatory approaches and conditions of approval/regulatory requirements. At this meeting LPA expressed an interest in dual LPA Resolutions, including one that expressed their opposition to COP in EC. Also, it should be noted, that other than Commissioner Ryffel's attempt to introduce a new regulatory approach, the LPA provided no direction on regulatory approaches nor conditions of approval/regulatory requirements. Staff's preliminary review of Commissioner Ryffel's approach has been deemed to warrant merit for further consideration as one of the potential regulatory approaches. LPA expressed concerns about the potential for Burt Harris claims arising from Lani Kai and Top O Mast. Staff reviewed the problem created by the initial creation of the EC Zoning District, in that it bifurcated properties into two zoning districts. Further, the Chair focused on the vested rights of existing establishments.

Again, some LPA members expressed a preference towards an outright prohibition on COP in EC. Staff reminded LPA that they can forward dual resolutions, with one expressing their desire for prohibition and another providing their input on potential regulatory approaches. Staff again emphasized a need to receive input from LPA on potential regulatory approaches.

Based upon the lack of clear consensus and the Chair's belief that the Land Development Code prohibits COP in EC, Staff embarked upon a comprehensive review and legal assessment of all approved COP's adjacent to EC, in order to identify any consistency of regulatory requirements. Further, Staff believed that given the Chair's memo, it would be beneficial to review previously approved COPs for policy interpretations and precedents in those approvals to verify the validity of her interpretation.

6. July, 2011 LPA Meeting

-At the July Meeting, Staff presented a timeline of COP regulations, dating back to the County requirements, starting in the 1970's to current Town requirements. Further, the inventory of all beachfronts COP's discovered 9 establishments wherein COP had been granted by either the Town or County in the EC Zoning District. Exhibit E provides a timeline for all applicable County and Town ordinances dealing with COP and an exhibit depicting the impact of the EC Zoning District on bifurcating properties between two zoning districts. It should be noted that the initial assessment of these 9 previously approved COPs, indicates that there was substantial policy consideration given to approving COP in EC, with some of these approvals. For example, some of these COP's were approved by Special Exception, subsequent to the incorporation of the Town and the approving resolutions gave specific contemplation to the fact that the COP use was being approved over the EC zoning line. In essence, Staff is reviewing these in more depth for the policy precedent they provide.

Based upon the more comprehensive requirements to identify, assemble and conduct thorough assessments of the legal standing previously granted COP approvals (State Licenses, Town approvals and County approvals prior to incorporation), Staff proposed a major revision to the project schedule, in order to allow Staff adequate time to research and prepare a comprehensive study of previously granted approvals.

Staff's current work effort is focused on acquiring all documentation of previously approved COPs, including a review of all meeting minutes. Reviewing County and Town ordinances/resolutions regulating alcohol and meeting minutes. This effort will include a review of changes in state alcohol regulations. Further, the effort will include additional public records requests from the State Division of Alcohol, Beverage and Tobacco and possibly Lee County.

7. Proposed COP Ordinance Development Timeline

-Based upon the intensive time and research requirements, Staff has modified the Ordinance Development Timeline, as follows:

June through August, 2011-Research and prepare comprehensive study of previously approved COPs and legal standing of each, along with policy implications of previous approvals.

September, 2011-Present report to LPA and discuss regulatory approaches/requirements.

October, 2011- LPA Workshop on Draft COP Ordinance.

November, 2011- LPA Public Hearing on COP Ordinance.

December, 2011-Town Council Introduction and Public Hearing on COP Ordinance.